Supreme Court, U.S.
FILED
DEC 5 1986
JOSEPH F. SPANIOL, JR.
CLERK

85-957

. NO.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1985

PAUL H. VIGNES,
Petitioner

v.

COMMONWEALTH OF VIRGINIA
Respondents

WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

APPENDIX

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COMMONWEALTH OF VIRGINIA

VS .C-20860-61

PAUL VIGNES

THE 5th day of December, 1983 came the Commonwealth of Virginia, by its Attorney, Arthur Karp, the Defendant pursuant to his recognizance and his Attorneys, Edward Weiner and Peter Greenspun.

WHEREUPON this case came to be heard on the Commonwealth's "Motion to withdraw its prior Motion to Nolle Prosequi" and argument of counsel was had on same.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the aforesaid motion should be and it hereby is granted; and the Court so ordered that the prior Nolle Prosequi be set aside.

THEREUPON the Court Ordered that the case of Commonwealth of Virginia vs. Paul Vignes C-20861 be continued to February 14,

1984 for trial by Jury and the case of Commonwealth of Virginia vs Paul Vignes C-20860 be continued to February 27, 1984 for trial by Jury.

IT IS FURTHER ORDERED by the Court that the appearance bond herein remain in full force and effect.

Entered this 12th day of December, 1983.

/s/ Paul Brown
Judge

COMMONWEALTH OF VIRGINIA

VS . C-20861

PAUL HENRI VIGNES

THE 17th day of February, 1984 came the Commonwealth of Virginia, by its Attorney, Arthur Karp, the Defendant pursuant to his recognizance and his Retained Attorneys, Edward Weiner and Kenneth Weiner.

WHEREUPON the Jury was polled as to their attendance on this date.

THEREUPON the jury returned to its room to resume its deliberation and after a time presented a question to which the Court responded and after a further period returned into Court and presented the following verdict, to-wit:

C-20861

We, the jury, find the Defendant "Guilty" of "Distribution of Cocaine as an Accomodation" as charged in the indictment herein and fix his punishment at <u>two</u>

and one-half years in prison

February 17, 1984 Donald Clarke
Date Foreman

WHEREUPON, on motion of the Defendant, the Jury was polled and each member thereof answered affirmatively as to the foregoing being their verdict.

THEREUPON the Jury was discharged.

THEREUPON the Defendant moved the Court to refer this case to the Probation Officer for the Circuit Court of Arlington County, Virginia, for investigation and report prior to the imposition of sentence, which said motion the Court granted and accordingly ordered said reference.

IT IS FURTHER ORDERED by the court that this case be continued to April 12, 1984 at 9:30 A.M. for the filing of the aforesaid report and the imposition of sentence.

IT IS ORDERED by the Court that the

appearance bond of the Defendant be revoked and the surety thereon released from further liability thereunder and the Clerk is hereby directed to so indicate in his records, referring to this order for his authority.

AND the Defendant is hereby remanded to jail. Entered This 8th day of March, 1984.

/s/ Thomas R. Monroe
Judge

COMMONWEALTH OF VIRGINIA

VS C-20861

PAUL HENRI VIGNES

THE 22nd day of May, 1984 came the Commonwealth of Virginia, by its Attorney, Arthur Karp, the Probation Officer for the Circuit Court of Arlington County, Virginia, the Defendant in custody of the Sheriff and his Retained Attorney, Edward Weiner.

WHEREUPON this case came to be heard on the Defendant's motion to set aside the verdict reached by the jury herein on February 17, 1984 and argument of counsel was had on same.

UPON CONSIDERATION WHEREOF it is the opinion of the Court that the said motion should be and it hereby is denied.

THEREUPON the Attorney for the Defendant was asked if he had received and read a copy of the report and further if he had

explained the report to the Defendant, to all of which questions the Attorney for the Defendant replied in the affirmative.

WHEREUPON the Attorney for the Defendant was asked if he desired to have the Probation Officer or any other witnesses sworn to testify regarding the matter before the Court, to which the Attorney for the Defendant replied in the affirmative.

THEREUPON the Court ordered that the report of the Probation Officer be filed as a part of the record in this case after certain discrepancies were noted therein, as are more specifically set forth in the stenographic record of this case, and the Defendant cross-examined the investigating officers and other witnesses who were duly sworn as the law directs immediately prior thereto.

AND IT BEING DEMANDED of the accused

if he desired to make a statement or to advance any reason why judgment should not be pronounced against him according to law, both he and his counsel made statements to the Court.

THEREUPON the Court, taking into consideration said statement and all of the evidence in the case, the report of the said Probation Officer and argument of counsel, doth ascertain and fix the punishment of the accused to be confinement in the Penitentiary of this Commonwealth for a period of two and one half ($2\frac{1}{2}$) years and payment of the costs of these proceedings.

IT IS ACCORDINGLY the Judgment of this Court, pursuant to the verdict of the jury, that the said Paul Henri Vignes be and he hereby is sentenced to confinement in the Penitentiary of this Commonwealth for the term of two and one-half ($2\frac{1}{2}$) years, the

period by the Court ascertained as aforesaid and that the Commonwealth of Virginia do recover against the said Paul Henri Vignes its costs by it about its prosecution in this behalf expended.

WHEREUPON the defendant, after conferring with his attorney, moved the Court to stay execution of the sentence in this case, which said motion the Court granted, the Commonwealth of Virginia, by its Attorney, having no objection thereto.

IT IS THEREFORE ORDERED by the Court that execution of the sentence in this case be and the same hereby is stayed until May 25, 1984 at 6:00 P.M.

BE IT REMEMBERED that the defendant and his attorney indicated their intention to appeal this case to the Supreme Court of Virginia.

IT IS FURTHER ORDERED that the bond in this case be and it hereby is continued to May 25, 1984 at 6:00 P.M.

IT IS FURTHER ORDERED by the Court that as soon as possible after the termination of the stay of execution of sentence, the defendant be removed and safely conveyed according to law from the jail of this Court to the Penitentiary of this Commonwealth, therein to be kept, confined and treated in the manner provided by law.

THE COURT ORDERS that the Defendant be allowed credit for the time spent in jail awaiting trial, namely March 22, 1983 (one day only) and February 17, 1984 thru March 22, 1984.

THE COURT CERTIFIES that at all times during the trial of this case, the accused was personally present.

THE birth date of the Defendant is

reported to be April 14, 1951.

BE IT REMEMBERED that the offense date herein was on or about November 18, 1982.

IT IS FURTHER ORDERED by the Court that bond for appeal be set at $8000.00 and that the Defendant is given until 6:00 P.M. Friday May 25, 1984 to perfect the aforesaid bond.

Entered this 4th day of June 1984.

/s/ Thomas R. Monroe
Judge

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 3rd day of June, 1985.

Paul Henri Vignes, Appellant,

against Record No. 841500
Circuit Court No. C-20861

Commonwealth of Virginia, Appellee.

From the Circuit Court of Arlington County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the

judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

David B. Beach, Clerk

By:

Deputy Clerk

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 6th day of September, 1985.

Paul Henri Vignes, Appellant,

against Record No. 841500
Circuit Court No. C-20861

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 3rd day of June, 1985, and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA)

vs.)CRIMINAL NOS. 20860
20861

PAUL H. VIGNES,)

Defendant)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS INDICTMENT FOR GOVERNMENT MISCONDUCT

III. CONCLUSION

Considering the totality of circumstances, the conduct of the government agent can only be considered so outrageous so that due process principles prevent the prosecution of the Defendant.

A crime would not have occurred but for the misconduct of the police in creatig the crime and soliciting the Defendant's participation by appealing to Defendant's sympathy to commit an unlawful act. Such

inducement of an innocent person must be considered repugnant to the public's sense of fairness. For these reasons the indictment against the Defendant should be dismissed.

Respectfully submitted,

PAUL H. VIGNES
By Counsel

May 16, 1983

Kenneth E. Melson, Esquire
Deputy Assistant Commonwealth Attorney
Arlington County Courthouse
Arlington, Virginia 22201

Re: Commonwealth of Virginia v. Paul H. Vignes (Arlington)
Criminal Nos. 20860, 20861
~~Commonwealth of Virginia v. Paul H. Vignes (Fairfax)~~

Dear Mr. Melson:

Pursuant to our telephone conversation of May 16, 1983 it is our understanding and the understanding of our client that the Arlington County Commonwealth Attorneys Office agrees to nolle prosse the above captioned (Arlington) charges against Paul H. Vignes ~~and have the pending Fairfax County charge amended to Distribution of Cocaine as an Accomodation, a Class 5 Felony, to which he will plead guilty~~, upon the following terms and conditions:

Kenneth E. Melson, Esquire
Deputy Assistant Commonwealth Attorney
May 16, 1983
Page Two

1. Paul H. Vignes will not contest the forfeiture of his automobile;

2. Paul H. Vignes will reimburse the appropriate government agency in the amount of $400.00 representing monies expended for the purchase of controlled substances;

3. Paul H. Vignes will testify truly and accurately as to his identification of a certain individual he has previously identified and an automobile he has previously identified regarding an armed robbery in Arlington County.

This is the understanding to which we agree.

SEEN & AGREED:

/s/
Kenneth R. Weiner
Counsel for Paul H. Vignes

SEEN & AGREED:

/s/
Kenneth E. Melson

/s/
Edward L. Weiner
Counsel for Paul H. Vignes

/s/
David S. Cayer

Dec. 5, 1983

MR. GREENSPUN: Your Honor, essentially there is one key case I'd like to proffer to the Court which looks to this issue, and that is Cooper versus United States.

MR. GREENSPUN: I submit there was an agreement and a meeting of the minds in this matter. It may not follow strict contractual law, but Cooper says it does not follow strict contractual law because you get the areas of fundamental fairness. And I think and believe there was an agreement and it should be followed.

. . . .

MR. WEINER: There is a motion in the Court's file, in Mr. Karp's file about, that I had asked that this trial of Mr. Vignes be continued because of the pending appeal in

Fairfax. Your Honor heard that motion and denied it. I know, as an absolute certainty, two other members of the Commonwealth's Attorney's Office knew of the continuance. And I am, I feel fairly confident that a third member, an Assistant Commonwealth, knew of the continuance.

MR. KARP: Now, with regard to my knowledge -- now, I did not check the file and if Your Honor notices, takes a look at the file, there are, you will see there are a number of motions in there.

THE COURT: I find as a fact that the Commonwealth was misled as to a material point. I don't have to find it was consciously done, but they were misled. Therefore, any agreement was not a meeting of the minds on the material points.

February 16, 1984

The Court: The Motion to Strike the Evidence with reference to the theory of entrapment as argued by the Defendant is overruled or denied.

Instructions, gentlemen?

MR. EDWARD WEINER: Your Honor would note my objection to that.

February 16, 1984

MR. KARP: Your Honor, with regard to Defendant's Instruction A, my position on this is essentially the position stated at the time of the Motion to Strike. I don't think there is a legal entrapment case in this, entrapment defense in this case. The reason for that is because we are dealing with the third of a series of transactions. One might argue--For purposes of this discussion, I would say that conceivably one might argue entrapment with regard to the first distribution. But by the time we get to the third distribution that idea is in the Defendant's mind. He, in fact, is making the telephone call, and the words that were testified to are very important here -- the words were, in effect, "I have it. Do you still want the toot." At that point nobody

was placing an idea in his mind. Nothing more had happened at that point, than, by his own testimony, the Defendant's own testimony, that the detective had come to him and said, "I'm going on a trip. I want something to, in effect, make my trip a livelier one." That's all that the detective said for that third transaction.

And he then went out, got the cocaine and distributed it. There is no entrapment for the 18 November offense. So, I would object to the entrapment instruction.

MR. EDWARD WEINER: Your Honor, the law of entrapment says that once the Defendant puts forth some evidence of inducement by the Government that then the entrapment issue is in fact founded. The investigator himself says he used the story about the sick father in New York; he used those appeals on several times, so many he

says he can't remember. And within those three sales he said he met with the Defendant anywhere from six to ten times. Each time, I submit, he made appeals to the friendship -- And, certainly, we have raised a question which, though Your Honor denied my motion to find entrapment as a matter of law, I think this question certainly must go before the jury, because they very reasonably could find that Mr. Vignes would not have done these things if not for the on-going inducement, on-going appeals to sympathy, the on-going holding out of friendship. There is no -- There is absolutely no evidence that this was done on the part-- on a commercial or business purpose that Mr. Vignes was really doing this and this was just another customer.

We heard in detail the story of the

lengths he went to do a friend a favor, going to one location, waiting, meeting someone, meeting them at another, getting in someone else's car. There is certainly a question whether or not he was ready, a ready participant to break the law without inducements. I think that's certainly a question that should go before this jury.

MR. KARP: The question of whether he was to break the law without inducements is not the issue before the Court; it's whether, for the third transaction, the idea was planted in his mind. The arguments that counsel gives with regard to the inducements, with regard to he did it as a friend, they go to the question of whether it was an accomodation; they do not go to the question of whether it was entrapment.

MR. EDWARD WEINER: Your Honor, I would submit it was an on-going appeal to

this man's emotions and on-going ploy and this question just go to the jury.

THE COURT: I've tested my memory as far as the testimony is concerned. I don't recall any testimony which would then give a justification for the giving of Instruction A or any instruction on entrapment. Unless there is evidence of this, the giving of that instruction is clearly reversible error and certainly almost a dictate to the jury to tell the jury to go out and find someone not guilty.

I'm going to come back to Instruction A, because I'm going to go further into the evidence and testimony in this case.

THE COURT: Instruction A is refused. The Court does not see any evidence of entrapment.

MR. KENNETH WEINER: Note our

objection to that, Your Honor.

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO.

PAUL H. VIGNES,

Petitioner

vs.

COMMONWEALTH OF VIRGINIA,

Respondent

PETITION FOR APPEAL

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October 2, 1984

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